

Exhibit 61

to the June 16, 2023
Declaration of Beth Wilkinson

Microsoft didn't mislead EU over ZeniMax deal, watchdog says in response to US concerns

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By [Andrew Boyce](#) and [Nicholas Hirst](#)

Microsoft didn't make any "commitments" to EU regulators not to release Xbox exclusive content following its takeover of ZeniMax Media, the European Commission said. US enforcers yesterday suggested that the US tech giant had misled the commission in 2021 and cited that as reason to challenge its proposed acquisition of Activision Blizzard.

Microsoft didn't make any "commitments" to EU regulators not to release Xbox-exclusive content following its takeover of ZeniMax Media, the European Commission has said.

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"The commission cleared the Microsoft/ZeniMax transaction unconditionally as it concluded that the transaction would not raise competition concerns," the EU watchdog said in an emailed statement.

The absence of competition concerns "did not rely on any statements made by Microsoft about the future distribution strategy concerning ZeniMax's games," said the commission, which itself has opened an in-depth probe into the Activision Blizzard deal and appears keen to clarify what happened in the previous acquisition.

In its complaint against Microsoft's \$69 billion acquisition of Activision Blizzard (see [here](#)), the US Federal Trade Commission said Microsoft's past conduct indicated it would harm rivals by restricting their access to Activision Blizzard's content if it completes the takeover.

It pointed to Microsoft's conduct in the ZeniMax deal in 2021. Despite assuring the commission that it would not have the incentive to withhold ZeniMax games from rivals, it then decided to make three of its newly acquired titles exclusive to Xbox and Game Pass, the FTC said.

"Microsoft's previous representations to the EC about its incentives after its purchase of ZeniMax were not borne out by Microsoft's own post-merger behavior," according to the FTC.

"Instead, Microsoft put its true post-merger incentives on full display when it decided to deny rivals its newly acquired future releases and thwart consumers who would choose to play them on a competing product."

— Track record —

The FTC, which did not identify any concerns with the ZeniMax deal, said Microsoft's behavior in the previous case should give a reason for suspicion over its "non-binding public commitments" to maintain the Activision Blizzard game Call of Duty's availability on PlayStation.

The EU agency found that even if Microsoft were to restrict access to ZeniMax titles, it wouldn't have a significant impact on competition because rivals wouldn't be denied access to an "essential input," and other consoles would still have a "large array" of attractive content.

Microsoft strongly disputes the FTC's allegations, publishing a document laying out the "facts" of the ZeniMax deal.

"Xbox has continued to ship ZeniMax content on PlayStation and other platforms, and games that were on PlayStation in March 2021 are still available today," it said.

In the EU merger filing, Microsoft told the regulator that it would honor all ZeniMax's agreements to make its current games available on other consoles, including two planned releases that would be exclusive at first to PlayStation 5, it said.

Microsoft kept this promise, it said. One of those games, Deathloop, released in September 2021, remained exclusive to PlayStation for one year, and the other, Ghostwire: Tokyo, released in March 2022, is still not available on Xbox “per Sony’s restriction.”

It told the commission that “future decisions on whether to distribute ZeniMax games for other consoles will be made on a case-by-case basis,” according to the document.

Two upcoming games, Starfield and Redfall, will be released only on Xbox and PC, Microsoft said, “in line with statements it made upon the close of the ZeniMax transaction.”

These, however, are predominantly single-player games with “no pre-existing sales, revenue or community of gamers on any console, much less PlayStation, that would be impacted by an exclusivity decision,” it said.

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